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Vol. IV
TRANSCRIPT OF RECORD

(Pages 1 to 161)

Supreme Court of the United States

OCTOBER TERM, 1955

No. 72

FRANK COSTELLO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 12, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

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Government's Exhibit 23

Statement of interview held on October 18, 1937, in Room 249, Old Post Office Building, Park Row and Broadway, New York, N. Y., with Mr. Frank Costello.

Present:

Mr. Frank Costello, witness,
Mr. David C. Anchin, attorney.

Mr. James A. Ronayne, special agent.
Miss Thelma M. Murray, stenographer.

The following questions were asked by Mr. Ronayne.
The following responses were made by Mr. Costello.

Q. Mr. Costello, this examination is for the purpose of determining your tax liability [redacted] It is my duty to advise you that according to your constitutional rights you do not have to answer any question which may incriminate you. Do you understand?
A. I do.

Q. Do you also understand that you are appearing before me voluntarily and answering all these questions voluntarily?
A. Yes, sir.

Q. Will you please raise your right hand? In this examination, do you swear that your answers will be the truth, the whole truth and nothing but the truth, so help you God?
A. Yes, sir.

Q. Repeat your name and address?
A. Frank Costello, 115 Central Park West.

Q. How long at this address?
A. Since September 1.

Q. Where did you live previously?
A. 241 Central Park West.

Q. How long at that address?
A. About six years, less a month.

Q. Is Mr. Anchin here to represent you before this hearing only or has he a general power of attorney over your tax matters?
A. He is here at present for this hearing.

FC

[redacted]

Government's Exhibit 23

Q. Does he handle all your tax matters?
A. Most of them.

Q. Who else handles your tax matters?
A. No one else but myself.

Q. Who is your attorney?
A. Who is my attorney?

Q. Yes.
A. What attorney do you mean?

Q. Do you have a personal attorney?
A. Do I have a personal attorney?

Q. Yes.
A. Well, I have several attorneys.

[redacted]

Q. Are you married?
A. Yes, sir.

Q. Have you any dependents?
A. Wife.

[redacted]

Q. Any others?
A. Mother.

Q. Does your mother rely upon you for support?
A. Yes, sir.

Q. What is the age of your mother and where does she live?
A. She is 86 and she lives in Astoria, L. I. I believe the number is 117 Halsey Street.

Q. With whom does she live?
A. With a brother of mine, my sister died.

Q. What percent of her support do you contribute?
A. 100 percent.

Q. Has your wife any income?
A. No, sir.

Q. Do you have any bank account?
A. No, sir.

Q. Do you have a safe deposit account?
A. No.

Q. Within the last four years, have you had a bank account or safe deposit account?
A. No, sir.

Government's Exhibit 23

[redacted]

Q. Have you any other occupation except gambling?
A. No.

Q. Do you run a book or do you just gamble on your own account?
A. On my own account.

Q. In what lines do you gamble?
A. This is all horses.
Attorney: You play cards also?
A. Yes, but these checks are for horses. I play cards.

Q. Bet on fights?
A. Sometimes, yes.

Q. But you say that most of your income comes from gambling on horses?
A. That is right.

Q. What do you know about the Bayou Novelty Co.
A. That is a business in New Orleans, La., in which I have an interest in Kastel's interest.

Q. Are you a partner in the Bayou Novelty Company?
A. I am no partner only a partner of Kastel's.

Q. What is the name of the partnership that you have with Kastel?
A. It is not a name it is just a verbal contract and the name of the partnership is Phil Kastel.

Q. Is there a written agreement on this partnership?
A. No.

Q. Is the partnership filed in any official filing place?
A. No, not as far as I know.

Q. Approximately what time did you enter this verbal agreement with Kastel?
A. 1935, around June or July we spoke about it.

[redacted]

Government's Exhibit 23

Q. What was the proposition and who made the first approach?
A. Kastel.

Q. What was the proposition?
A. That he was going into business in Louisiana, The Bayou Novelty Company, and asked me if I would take an interest, a percentage of his interest, which I agreed.

Q. What was the business in Louisiana?
A. Slot machine.

Q. Are these slot machines confined only to the State of Louisiana?
A. That is right.

Q. Did you have to put up any cash or any other consideration in this partnership?
A. Yes, I believe I advanced him about $9,500.00 - between nine and ten thousand.

Q. And this was in approximately June or July, 1935?
A. That is right, that is when we made this deal.

Q. Did you put up any other cash?
A. No, sir.

Q. Did you render any services?
A. No, sir.

Q. From what source did you get the cash to put up in the business?
A. I do not remember now, probably had some and some I borrowed.

Q. Just take a few minutes and try to state definitely where this $10,000.00 came from.
A. I really do not remember how I manipulated it but it was a manipulation from the track, from Peter to Paul, and pay it back.

Q. What was the reason that Kastel took you into the partnership with him?
A. I imagine it was for two reasons, one reason we are very good friends, one he saw me make some money, and I believe he was short also to go into the proposition.

Q. At the time of making this capital contribution of $10,000.00, was the arrangement then that you were to get 50 per cent of Kastel's interest in the Bayou Novelty Company?
A. That is right.

Q. Did you know what other interests were in the Bayou Novelty Company?
A. No.

[redacted]

Government's Exhibit 23

Q. Did you know what percentage of interest of the Bayou Novelty Company Kastel would get?
A. I believe he had 50 per cent, forty or fifty per cent.

Q. Can you remember definitely what percentage he may have told you he had in the business?
A. I could not give you definite - off hand.

Q. Did he not mention the names of other interested parties in the business?
A. No.

Q. Was this the first deal of such a nature you had with Kastel?
A. Yes, sir.

Q. Have you ever been to New Orleans?
A. Yes, sir.

Q. Have you gone down there on business connected with this?
A. No.

Q. How often have you been to New Orleans?
A. Many times for two or three days at a time - go down there fishing.

Q. When you entered this proposition did either you or Kastel have any idea of the approximate amount of return you would get on your proposition?
A. No.

Q. Did you expect to get anything like you did get in the year 1936?
A. No, frankly speaking, I thought it was a big return.

Q. How do you obtain your share of the profits from the Kastel partnership?
A. Through Kastel, weekly sometimes monthly.

Q. In what form do you receive profits?
A. Cash.

Q. And how is the cash transmitted to you?
A. By hand.

Q. And who gives it to you?
A. Kastel.

Q. Is the cash given to you in New York?
A. New York and a few times I have got it in New Orleans.

Q. When was the last time you received cash from Kastel?

[redacted]

A. Probably three months ago.

Q. Approximately how much was the amount?
A. About $5,000.00.

Q. Where was the amount paid you?
A. In New York.

Q. Can you recall the approximate date you received this cash?
A. No.

Q. And the payment made before this, how much was that?
A. A few thousand.

Q. Did you actually receive the full $78,000.00 as was reported on the partnership return for the year 1936?
A. Yes, sir.

Q. Do you have any records or memoranda showing the approximate amount received and the approximate dates received?
A. No.

Q. How do you keep track of the monies due you?
A. How do I keep track of the monies due me?

Q. On this partnership.
A. I do not exactly keep track. At the end of the year he gives me a statement and tells me, "Here this year you received so much and your taxes are so much," and that is how I know how much taxes to pay out.

Q. Have you retained that paper that he gave you with those figures?
A. No, no.

Q. Will you retain any such papers that you get in the future?
A. Will I?

Q. Yes.
A. If you demand that, I will. I did not think it was necessary on account of he does his own bookkeeping there.

Q. In the year 1936, your return shows the amount of $78,955.83 received from the partnership with Phil Kastel. Did you have any othe income during this year?
A. No.

Q. Were you still engaged in gambling in the year 1936?
A. Yes.

[redacted]

JC

Government's Exhibit 23

Q. You had no income from gambling?
A. No, I lost money.

Q. To whom did you lose the largest amounts in this year?
A. 1936?

Q. Yes.
A. Well, I imagine I did the most business with say Kalik and Frank Erickson, which I believe is this Levy fellow here, and also Peter Bloncky.

[redacted]

Q. In the years previous to 1936, how did you approximate your income?
A. As I said before, my only records were memorized and I had small slips in my pocket. I would start off with a few thousand dollars. At the end of the year, I would take inventory on myself what cash I had on hand and my living expenses, and I would determine my income on that and then I would probably add $5,000.00 to it, being I had no records to make sure.

[redacted]

JC

Government's Exhibit 23

Mr. Anchin: I started off with a balance, an approximate balance at the beginning of each year, and I figured at the end of the year how much money I had and figured my living expenses, and in this way I computed my approximate income. I usually added on a few thousand dollars to/figures I thus obtained.

A. That is right.

Q. As of today's date, what is the approximate amount of your assets, how much cash?
A. $25,000.00 or $30,000.00.

Q. You actually have that in your possession?
A. Yes.

Q. Are you holding this money yourself?
A. For myself, I have no other assets outside of my home. I also own an automobile.

Q. What kind of car?
A. Cadillac.

Q. What year?
A. 1937.

Q. Do you own any real estate?
A. No, sir.

Q. Do you have any insurance policies?
A. Yes.

Q. In what companies and the approximate amounts?
A. I have a $15,000.00 with the New York Life. I have a $20,000.00 in the Canadian Life Insurance Company.

JC

Columbian Nat. Co
10,000

Q. What type of policies are these?
A. $20-year endowment.

Q. Have you any expensive jewelry?
A. No.

Q. Has your wife any expensive jewelry?
A. I would not call it expensive.

Q. Any expensive clothes of yourself or your wife?
A. I would not know if you would call them expensive.

Q. Approximately?
A. Just ordinary clothes.

[redacted]

JC

Government's Exhibit 23

Q. Have you any loans due you from individuals or persons?
A. I suppose I probably have some money outstanding.

Q. Approximately?
A. Probably $5,000.00.

Q. Another asset which you probably forgot to mention is your share of the income on this partnership of Kastel's?
A. That is right.

Q. As best you recollect, have we listed all your assets?
A. Yes, sir.

Q. For your liabilities, approximately how much do you owe?
A. I owe - do you mean taxes?

Q. Making a round sum?
A. I have back income taxes and current income taxes.

Q. Any other liabilities?
A. Probably six or seven thousand at the race track at the present moment because these things are taken up from one day to another.

Q. Any other liability that you can recall?
A. No.

Q. Is there anything else that you would like to put into the record, Mr. Costello?
A. I do not think I have anything to say. I think I have covered everything and answered all questions to my best knowledge.

Q. This statement will be typed in the very near future and will you come in and sign it?
Mr. Anchin: (Supplies answer) I will be glad to sign the statement after I have had an opportunity to read it and make any corrections that may come to my notice. I also at this time request a copy of the statement I made today for myself.

Q. You agree with that statement, Mr. Costello?
A. Yes, sir.

Frank Costello
Frank Costello.

Subscribed and sworn to before
me this 19 day of October, 1937.

James A. Ronayne
James A. Ronayne, Special Agent.

[redacted]

Government's Exhibit 30

U. S. v. John Doe — P Ht. - 1
Aug. 24, 1939 — Frank Costello

FRANK COSTELLO, after having been first duly sworn, testified as follows:

BY MR. DOYLE:

Q Mr. Costello, this is a federal grand jury sitting in the Southern District of New York. This is Mr. Young and my name is Doyle. We are assistant U.S. attorneys. We are going to ask you questions; but we want you to know that any answers you may give we will use against you, if necessary. This body may find an indictment on the answers that you give in this room. The only answers that you cannot, -- I mean, that you are allowed to refuse to answer is where you feel that that answer will incriminate you in a federal matter. Is that understandable ? A Yes, sir.

Q What is your present address? A 115 Central Park West.

Q New York City? A Yes, sir.

Q What is your present business? A I have a financial interest in the Pelican Novelty Company in Louisiana.

Q What do you call it? A Pelican.

Q Is Phil Kastel associated with you in that business

A Yes, sir.

Q Who are the other associates? A That is the only associate I know.

Q That you know? How much of an interest have you got in that business? A I have - I would say, well, 25% of the total interest; 25% of the hundred.

Q How much has Kastel got? A Will you allow me to explain it my way.

Q Go ahead. A Mr. Kastel has 50% of interest. I have 50% of his 100%. In other words, I am not active in the business. That is a financial investment and I have a half interest in his earnings.

Q The name of that company is the Pelican Novelty Co. A Pelican, that's right.

Q What does the Pelican Company merchandise? A It is a novelty machine.

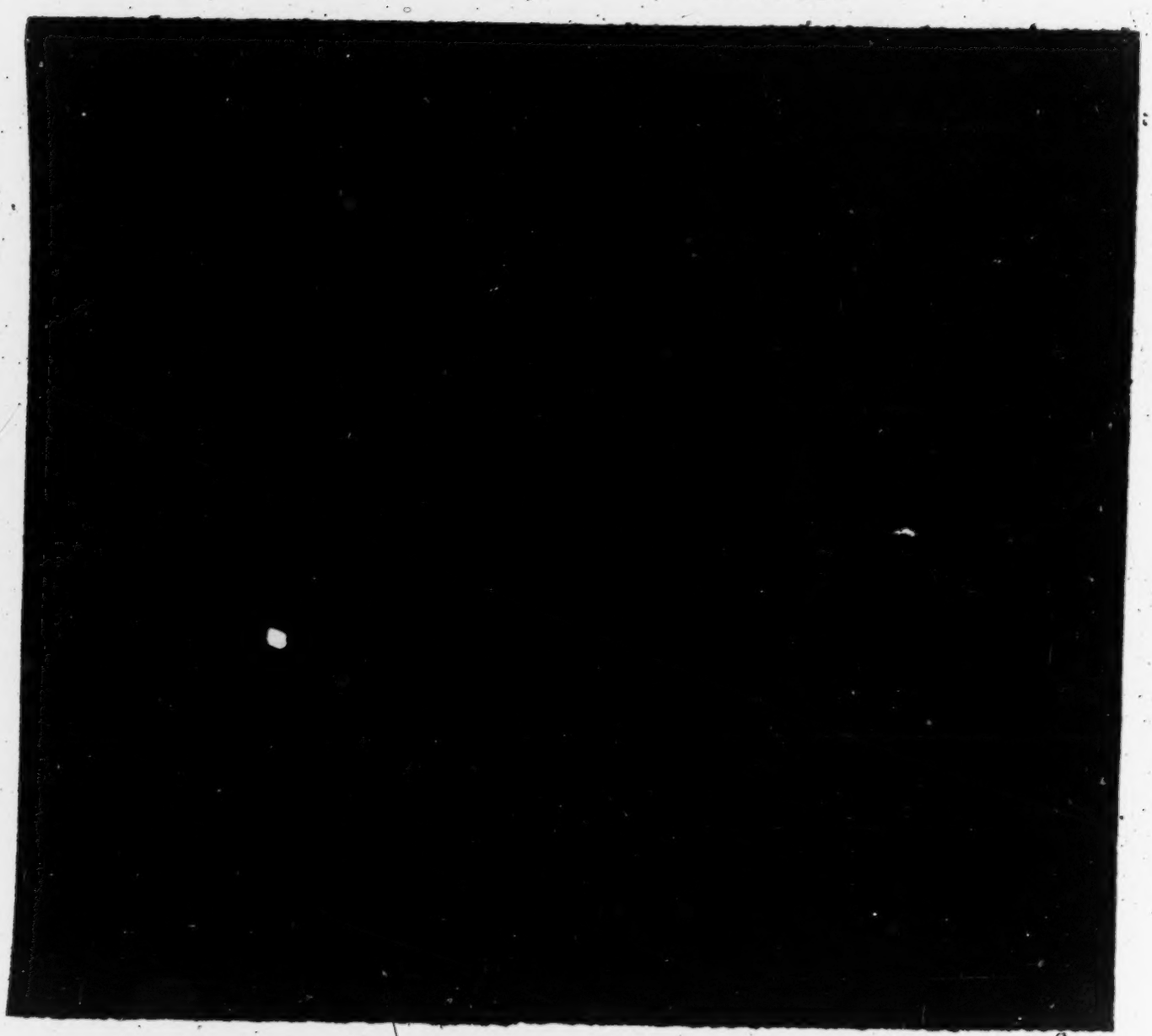
Q What does the machine look like? A Well, you would probably call it a slot machine.

MR. YOUNG: What would you call it? ~~[illegible]~~ A What would I call it?

Q Yes? A A slot machine.

Government's Exhibit 30

P Ht - 4
Costello



Q Whom do you sell those to? A Who do we sell them to? Well, they are not sold. They are out in different stores.

Q Rent them out? A Rent them out in different stores.

Q Where do you rent them out? A Grocery stores, cigar stores, beer saloons; different types of stores.

Q What cities? A In Louisiana; that is, in New Orleans.

Q Just in New Orleans? A That's right.

Government's Exhibit 30

Q And how much rent do you get on one machine?

A ~~They want~~ We go on a certain percentage.

BY MR. YOUNG:

Q Tell me this, Mr. Costello: Do you rent out the machines or do you rent the space that the machine takes up in the store? A Well, I don't know if you call it rental. You put the machine in there. You put it in a certain spot, and at the end of the week or thereabouts - I am not acquainted with the collection days, whatever they are, you get a certain percentage of the profits.

Q The cigar store man gets some and the Pelican people get the rest? A That's right.

Q What is their percentage? A What is their percentage?

Q Yes? A I believe it is about 30 to 40%.

Q 30-40% to the owner of the store? A That's right.

BY MR. DOYLE:

Q Mr. Costello, the balance goes to the Pelican Novelty Company, is that correct? A Right.

Government's Exhibit 30

Q How old is the Pelican Company? A The Pelican Company is a new company. When I say "new," I believe it is about a year, a year and a half.

Q What was the company before that? A The Bayou.

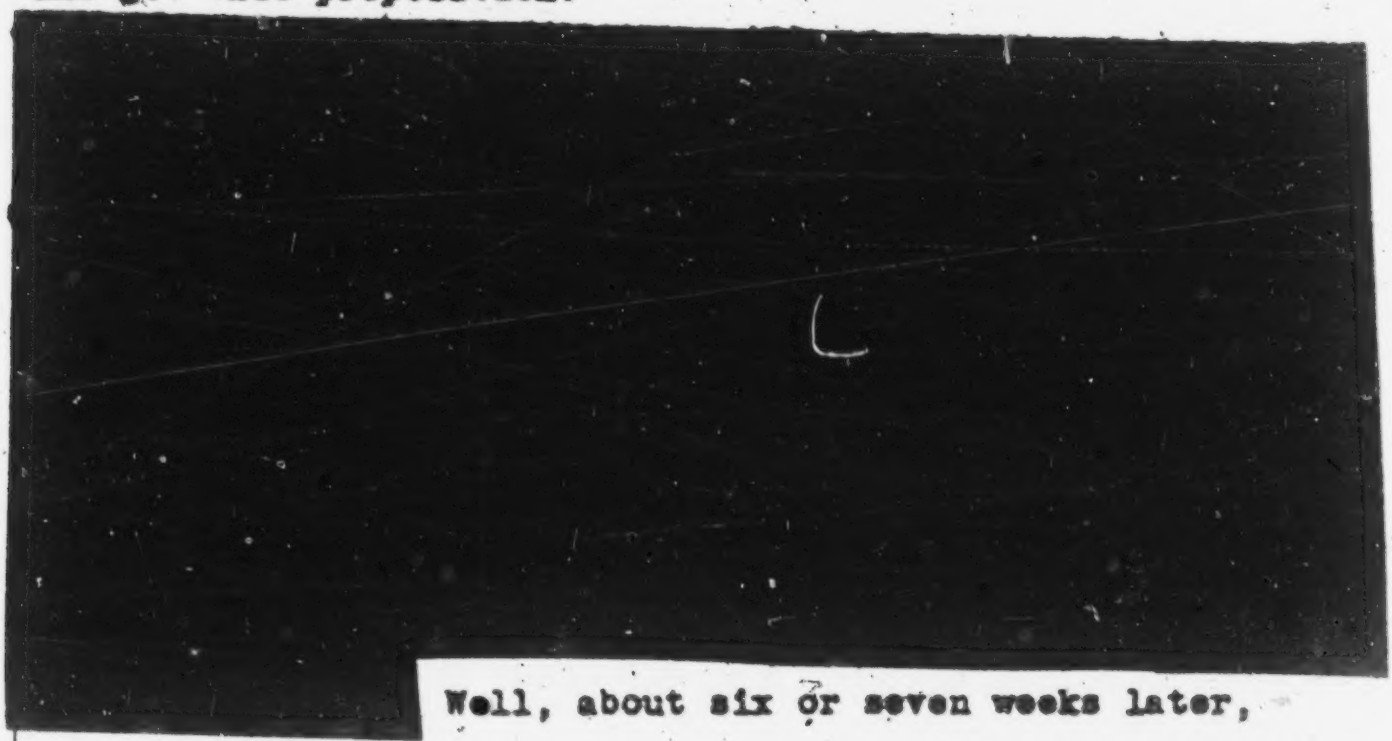
Q When was that first incorporated? A In 1936.

Government's Exhibit 30

P Ht - 7
Costello

Q And who incorporated it? A May I tell the story my way?

Q Certainly. Go right ahead. A I was invited to come to New Orleans, Louisiana, in the early part of 1935, and got this proposition.



Well, about six or seven weeks later, which would be the later part of 1935, I got Philip Kastel, which is my associate, to go down there and work the thing out. He went down there and he incorporated, and from then on he worked out all the deal. I have never been active.

Q How much money did you put out to start with? A $15,000.

Q $15,000.00? A That's right.

Government's Exhibit 30

U. S. v. John Doe
Aug. 25, 1939.

P Ht - 1
Frank Costello

FRANK COSTELLO recalled.

FOREMAN: Now, Mr. Costello, you recognize that you are still operating under the oath you took yesterday? A Yes, sir.

BY MR. YOUNG:

Q Mr. Costello, yesterday you were telling us about your activity in the Pelican Novelty Company. I ask you if that is the only business activity that you have been interested in in the years 1935 to date? A Yes, sir.

Government's Exhibit 30

P Et - 2
Costello

[redacted]

Q And who are the other partners? A Philip [redacted].

Q Philip Kastel and yourself? A That's right.

Q You own it together? A No, sir.

Q Who are the other ones? A Well, to make myself clear again, I have no interest in the Pelican at all. I have an interest in Phil Kastel's interest.

Q Now, what is the answer to the question: Who are the others? Who are interested in the concern? A Well, to my knowledge there a Geigman, two Geigmans. There is a Dudley Geigman and a Harold Geigman.

Government's Exhibit 30

F W
Costello

[redacted]

Q Well, in 1938, were you engaged in gambling? A Well, I didn't make a business of it. I just gambled.

Q Well, did you win? A No.

[redacted]

Government's Exhibit 30

P Ht - 23
Costello

Q Yes. A Yesterday I said that, - you see, checking up on this fellow here, Murphy - I said that Phil Kastel had 50% of the Pelican or the Bayou. Well, today I find out that most he has had is 40%.

Q He had 40% of the Pelican? A That's right, or the Bayou.

Q And you had 50% of Kastel? A That's right. Yesterday I said 50.

Q Who has the other, the Geitermans? A The Geitermans have the other.

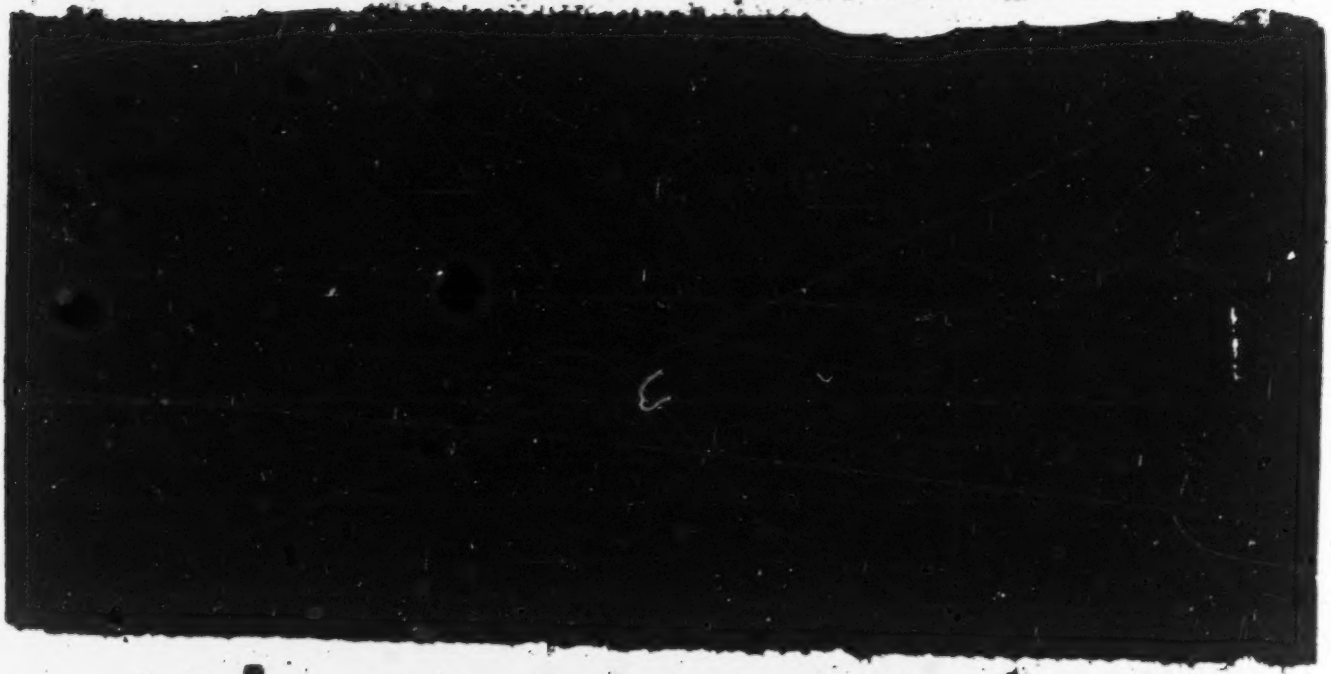
Q Have the other part of the Pelican? A Yes.

Q Does the Bayou Novelty Company run on any [illegible]?

A No.

30/20

Government's Exhibit 30



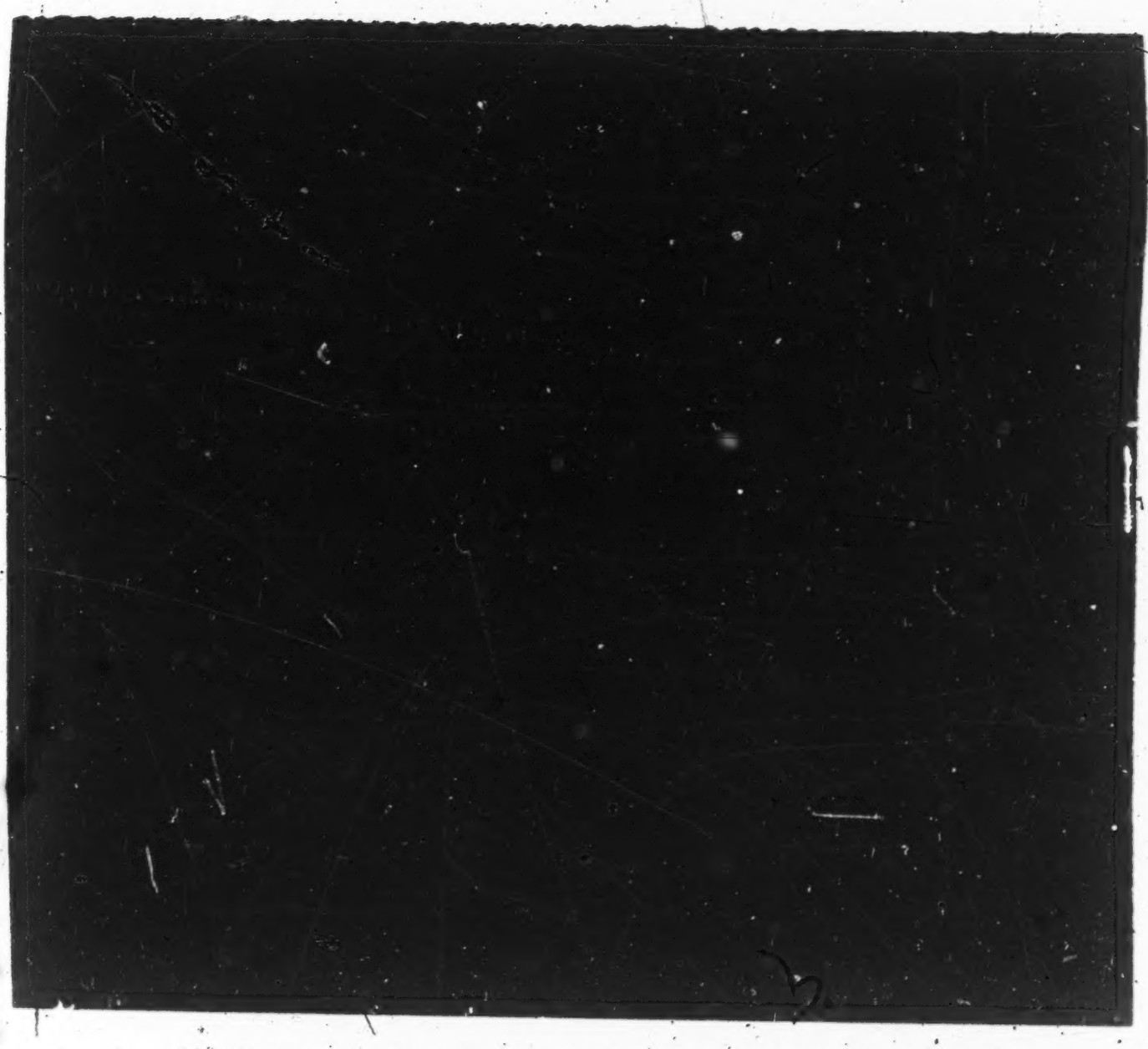
Q They were in the Borough of Manhattan? A Yes.

Q How long did the Midtown Co. operate? A I believe a year and a half or two.

Q That would be until 1933? A Yes.

Government's Exhibit 30

Costello PH 10



Q What was the next connection you had with slot machines after the Midtown Co. was dissolved? A In New York?

Q Take it on a nationwide basis. A I had no connection in New York or any other State outside of Louisiana.